

Reference data submission under Article 4(1) of Regulation No 596/2014 on market abuse (MAR)

1. The EU co-legislators, the European Parliament and the Council of the European Union (EU) concluded triologue negotiations with a political agreement on the postponement of the application date of Directive 2014/65/ EU (MiFID II) and Regulation (EU) No 600/2014 (MiFIR) until 3 January 2018. The agreement is expected to be adopted by the Plenary of the European Parliament and the Council of Ministers of Finance (ECOFIN) in early June 2016 before being published in the Official Journal of the EU in due course. The agreement also provides for postponement of the application date of certain provisions of MAR, in particular the Article 4 thereof until the same date. Specifically, the requirements set out under Article 4(2) and (3) will apply from 3 January 2018, whilst the application date of the requirement in Article 4(1) remains 3 July 2016.
2. The requirement of MAR Article 4(1) for notification of the financial instruments reference data is, therefore, envisaged to apply from 3 July 2016. According to this requirement market operators of regulated markets and investment firms and market operators operating a multilateral trading facility (MTF) or an organised trading facility (OTF) are obliged to notify their competent authorities (CAs) of any financial instruments for which a request for admission to trading on their trading venue is made, which is admitted to trading, or which is traded for the first time. However, since the concept of OTF will only enter into force on 3 January 2018, as set out in Article 39(4) of MAR, the reporting obligation under Article 4(1) of MAR will apply from 3 July 2016 only to market operators of regulated markets and investment firms and market operators that operate an MTF.
3. The respective operational arrangements, new data formats, IT systems and infrastructures required to be put in place by CAs, ESMA and concerned market participants for Article 4 of MAR are essentially the same as those required for implementation of provisions of Article 27 of MiFIR. In order to minimise the burden of reporting, ESMA agreed to implement these requirements in the same manner through technical standards developed under MAR and MiFIR, which were submitted to the Commission on 28 September 2015.
4. Although the MAR Article 4 implementing technical standards specifying technical formats required for submitting reference data were published¹ in the Official Journal on 17 March 2016, the MAR Article 4 regulatory technical standards specifying which data elements need to be reported in the reference data have not yet been published in the Official Journal². Therefore, trading venue operators are not in possession of definitive

¹ Commission implementing Regulation (EU) No 2016/ 378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council; OJ L 72, 17.3.2016, p. 1.

² These standards were adopted by the European Commission (EC) on 26 February 2016 and are now under scrutiny by the European Parliament and the Council

legal requirements they need in order to develop the appropriate IT systems and start submitting data in compliance with MAR Article 4 in July 2016.

5. ESMA previously acknowledged that the operational arrangements for collection and publication of reference data are complex and require the alignment of IT systems and infrastructures operated by trading venues, CAs and ESMA. More specifically, in October 2015 ESMA communicated to the European Commission (Ref: ESMA/2015/1513) the risks and technical challenges for many CAs, ESMA and a high number of trading venues to be ready for the implementation of the collection, verification and publication of the new reference data systems for the originally envisaged MiFID/MiFIR January 2017 go-live date.
6. The implementation of MAR Article 4(1) requirements will be, in practice, delivered through the same IT systems developed for the implementation of Article 27 of MiFIR. Those IT systems will not be ready, in a majority of Member States and ESMA, by 3 July 2016.
7. Taking the above into consideration, trading venue operators that are currently required to comply with Article 11 of Regulation No 1287/2006³ are expected to continue to comply with those requirements after 3 July 2016 until the respective IT systems have been developed and their availability has been communicated by CAs and ESMA. At the same time, Member States may require additional information regarding financial instruments to be provided under the aforementioned Regulation No 1287/2006.
8. Trading venue operators will be notified by CAs and ESMA in the course of 2016 about the expected availability of the respective IT systems for reference data submission and will be provided further instructions about the preparation for and the launch of the reporting using the new data formats under Article 4 of MAR.
9. This communication is made in anticipation of the confirmation of the aforementioned political agreement by the Plenary of the European Parliament and the Council of Ministers of Finance (ECOFIN) as outlined under paragraph 1.

³ Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive